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May 16, 1996

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20054

Re: In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

Dear Mr. Caton:

Enclosed please find for filing on behalf of Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD"), an original and twelve copies of the Comments of TLD prepared in connection with the above-referenced rulemaking. Also enclosed is an additional copy of the Comments which we ask you to date stamp and return with our messenger.

Respectfully submitted,

Alfred M. Mamlet
Colleen A. Sechrest

Enclosures

No. of Copies rec'd 0+12
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	**CC Docket No. 96-98**

COMMENTS OF TLD

TELEFÓNICA LARGA DISTANCIA DE PUERTO RICO, INC.

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Dated: May 16, 1996

SUMMARY

Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD") strongly supports the Commission's efforts to establish quickly a national regulatory structure to implement the local competition provisions of the Telecommunications Act of 1996 ("Telecommunications Act" or "1996 Act"). Congress entrusted the Commission with the responsibility for establishing the rules that will implement the national telecommunications policy created by the 1996 Act. Central to this policy is opening local markets to competition which Congress accomplished primarily through the interconnection obligations placed on local exchange carriers ("LECs") by Section 251.

In order to implement Congress' policy, it is essential that the Commission establish uniform, national standards to ensure that policy variations among States do not themselves create regulatory barriers to competition. With carefully tailored standards, the Commission can ensure a national network of competitive local markets while at the same time respecting the discretion that the Telecommunications Act grants to the States.

This is particularly true with respect to Section 251(f)(2), which gives State commissions the authority to grant waivers of Section 251's core interconnection obligations in certain circumstances. Without appropriate Commission guidelines, this waiver provision could be used as a tool to protect local monopolies and dramatically slow the advent of competition -- an outcome obviously antithetical to Congress' intent. To this end, TLD suggests in these Comments a number of standards that the Commission can use to provide State commissions with the necessary guidance, without limiting their flexibility to address the particular regional and local market issues that require their expertise

Specifically, TLD proposes five standards which would establish a base-line interpretation of key terms in Section 251(f)(2). **First**, Section 251(f)(2)(A) requires that any waiver granted be "necessary." The Commission should clarify that "necessary" means that there is no other available alternative. Further, the Commission should require a State commission to explicitly consider other proposed alternatives, and to explain why such alternatives are not acceptable. This interpretation of "necessary" follows both from the standard definition of the term, as well as from Congress' clear intent that its principal goal -- that local markets be open to competition -- is not set aside lightly.

Second, Section 251(f)(2)(A)(i) permits the State commission to grant a waiver in order to "avoid a significant adverse economic impact on users of telecommunications services generally." The Commission should make clear that this criterion requires a LEC to demonstrate that the obligation for which it seeks a waiver would impose a material financial loss to a large portion of its subscribers. Clear numerical benchmarks would be useful in this regard. For example, the Commission could state that "general use" means the majority -- more than 50% -- of a LEC's users must be affected. Similarly, the Commission could state that a significant adverse impact requires a rate increase of at least 20%.

Third, Section 251(f)(2)(A)(ii) permits the State commission to grant a waiver in order to "avoid imposing a requirement that is unduly economically burdensome." This provision should not permit a LEC to claim an exemption for losses because they are the inevitable result of lower prices, which are in turn the direct result of healthy competition. Instead, the Commission should state unequivocally that this criterion requires a LEC to demonstrate that the particular obligation it seeks to waive would in fact force it to provide service below cost.

Fourth, Section 251(f)(2)(A)(iii) permits the State commission to grant a waiver in order to "avoid imposing a requirement that is technically infeasible." The Commission should clarify that this criterion is not satisfied simply because a LEC must make capital expenditures to implement an interconnection agreement. Instead, the Commission should require a LEC to demonstrate that it is physically impossible to meet the specific interconnection requirement it seeks a waiver for.

Fifth, Section 251(f)(2)(B) requires that any waiver granted be consistent with "the public interest, convenience, and necessity." The Commission should clarify that a decision is consistent with the public interest if it implements Congress' intent to open local markets, except when a local LEC is too weak to survive in a competitive environment. The FCC should accordingly should make clear that, in order for a waiver to be granted, the public interest benefits in granting a LEC relief must outweigh the benefits of local competition.

In addition, there is a strong public interest in preventing a LEC that is entering the long distance or video markets from using their local monopoly position to gain an unfair competitive advantage in these new markets. Accordingly, the Commission should clarify that it is not in the public interest for a LEC entering the long distance or video markets to receive a waiver from Section 251's interconnection obligations.

In addition, the Commission should ensure that its national standards for waivers are implemented by accepting jurisdiction of appeals of State commission waiver decisions. By channeling appeals of all such decisions to the Commission, the Congressional mandate for a uniform national interconnection policy will be achieved. Such an appeals mechanism will also assist State commissions to stave off what are likely to be persistent and forceful efforts on the part of some LECs to resist the introduction of competition.

TABLE OF CONTENTS

Page

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	**CC Docket No. 96-98**

TLD'S COMMENTS

I. INTRODUCTION

Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD") strongly supports the Commission's efforts to establish quickly a national "regulatory paradigm" to implement the local competition provisions of the Telecommunications Act of 1996.[1/] As the Commission has recognized, "Congress entrusted to [the Commission] the responsibility for establishing the rules that will implement most quickly and effectively the national telecommunications policy embodied in the 1996 Act." This new regulatory paradigm is "essential to achieving Congress's policy goals,"[2/] the heart of which is the interconnection obligations placed on local exchange carriers ("LECs") by Section 251.

In order to achieve Congress's pro-competitive policy goals, it is essential that the Commission establish uniform, national standards to ensure that policy

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1/ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 at ¶ 2, CC Docket No. 96-98 (rel. Apr. 19, 1996) ("Interconnection NPRM" or "NPRM").

2/ Id.

variations among States do not simply replicate the current "morass of regulatory barriers which balkanize the telecommunications industry into protective enclaves."[3/] With carefully tailored standards, the Commission can ensure a national, competitive landscape while at the same time respecting the discretion that the Telecommunications Act grants to the States. This is particularly true with respect to Section 251(f)(2), which gives State commissions the authority to grant waivers of Section 251's interconnection obligations in certain circumstances. Commission guidelines are essential to ensure that this waiver provision is not used as a tool to protect local monopolies and dramatically slow the advent of competition.

In Part II, TLD suggests a number of standards that the Commission can use to provide State commissions with the necessary guidance, without limiting their flexibility to address the particular regional and local market issues that require their expertise. Specifically, these standards would allow a LEC to receive a waiver only if the obligation sought to be waived would undeniably and unavoidably: (1) impose material losses on a large portion of the LECs subscribers; (2) require the LEC to offer services at below cost; or (3) be physically impossible for the LEC to comply with. At the same time, the Commission should make clear that any waiver decision must comport with the fundamental judgment that Congress made in enacting Section 251: that open local markets are in the public interest.

In Part III, TLD demonstrates that the Commission should ensure that its national standards for waivers are implemented by accepting jurisdiction of appeals of State commission waiver decisions. By funneling appeals of all such decisions to the Commission, the Congressional mandate for a uniform national interconnection policy will be achieved.

3/ Id. at ¶ 2 (citing, Statement of Senator Pressler, 141 Cong. Rec. S7881-2, S7886 (June 7, 1995).

II. THE COMMISSION SHOULD ESTABLISH NATIONAL STANDARDS FOR IMPLEMENTING SECTION 251

Section 251 is in many respects, the single most important section of the Telecommunications Act of 1996. The non-discriminatory interconnection obligations it imposes on LECs are essential to ensure that local markets are opened up to competition as quickly as possible. In turn, competitive local markets are essential to permit LECs to enter long distance and video markets. As the Commission has itself recognized in the NPRM, its "rules implementing section 251 will have a pervasive and substantial impact in a variety of contexts under the 1996 Act and will serve as the cornerstone of the pro-competitive provisions of the Statute."[4/]

Equally important is the role that the Commission must play in implementing these interconnection obligations. Specifically, Congress charged the Commission to take "all actions necessary to establish regulations to implement the requirements of this section."[5/] In short, it is ultimately the Commission's responsibility to ensure that **all** of Section 251's provisions are properly implemented by all involved, including LECs, their competitors, and the State commissions who are called upon to both approve any interconnection agreements reached, arbitrate where such agreements cannot be reached, and grant or deny LEC requests for exemptions.

Given the importance of the State commissions' role, it is particularly critical that the rules the FCC establishes in this proceeding provide the State commissions with sufficient guidance. Without such guidance, State commissions will likely take widely divergent and in some cases protectionist, paths in addressing many of the questions raised by Section 251. At best, such divergence can weaken the

4/ Interconnection NPRM at ¶ 24.

5/ 47 U.S.C. § 251(d)(1).

uniform, cohesive regulatory structure that Congress sought to build in the Telecommunications Act. At worst, it could permanently hamper the advent of local competition. This is particularly true with respect to Section 251(f)(2), which permits LECs with less than 2% of the nation's lines to apply for an exemption from the Act's interconnection obligations. Such exemptions, if granted indiscriminately or if unduly influenced by regional bias for the dominant LEC, could seriously undercut Congress' efforts to end the era of local monopolies.

A. Divergent Or Protectionist State Policies Taken Pursuant To Section 251(f)(2) Could Undermine The Pro-Competitive Goals That Section 251 Was Designed To Achieve

Section 251(f)(2) grants each State commission the authority to exempt a LEC with less than 2% of the Nation's subscriber lines from Section 251's interconnection obligations if it determines that such an exemption:

> (A) is necessary (i) to avoid a significant adverse economic impact on users of telecommunications services generally; (ii) to avoid imposing a requirement that is unduly economically burdensome; or (iii) to avoid imposing a requirement that is technically infeasible; and (B) is consistent with the public interest, convenience and necessity.[6/]

The significance of this provision is obvious. It provides small, rural LECs with the breathing room they need to prepare, economically and technically, for competition.

At the same time, the potential breadth of these waivers is enormous. Every LEC in the country except for the RBOCs and GTE are eligible for waivers. The absence of specific guidelines allows considerable room for misinterpretation, if not misuse, both by the LECs and the States themselves.

6/ 47 U.S.C. § 251(f)(2).

The tensions between promoting competition and providing circumscribed waivers where warranted are all too apparent. Already, State commissions are faced with pressures from LECs and State legislatures interested in slowing, not speeding, the advent of competition, both with respect to the interconnection obligations of Section 251 generally and the waiver provision of Section 251(f)(2) specifically.

For example the Texas Public Utility Commission ("TPUC") has recently decided that a number of provisions in the Texas Public Utility Regulatory Act do not conflict with the Telecommunications Act of 1996.[7/] This is particularly troublesome, in that some of the TPURA's provisions are deliberately designed to slow the introduction of competition. As one of the TPURA's authors, State Senator David Sibley put it: "Deregulation can result in chaos which can harm the public we serve . . . ."[8/] Of particular concern is a TPURA provision which prohibits any company with over 6% of the long-distance market in the State from interconnecting with a local system in order to resell services.[9/] This TPURA provision appears to directly conflict with Section 251(c)(2), which states that all incumbent LECs have the duty to "provide, for the facilities and equipment **of any requesting telecommunications carrier**, interconnection with the local exchange carrier's network . . ."[10/] Moreover, incumbent companies, such as Southwestern Bell, do not have to offer discounts exceeding 5% from basic rates to other phone companies that want interconnections in order to resell

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7/ Albert R. Karr, Texas Defies Washington in Phone Deregulation, Protecting Its Local Bell Against Giant Rivals, The Wall Street Journal, A16 (May 2, 1996).

8/ Id.

9/ Id.

10/ 47 U.S.C. § 251(c)(2) (emphasis supplied)

services.[11] This provision conflicts with Section 252(d)(3), which requires State commissions to establish resale rates by subtracting the LEC's "marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."[12]

Such clear State-Federal conflicts put State commissions in a difficult position. As one TPUC commissioner stated: "It's very difficult as a state official to find that our state Legislature's action is blown out of the water."[13] Indeed, the TPUC recognized that it would benefit from clear FCC guidance when it recently filed a Petition for Declaratory Ruling on whether these provisions are preempted under Section 253 of the Telecommunications Act. Clearly, the TPUC would benefit also from federal interconnection waiver standards which "serve as a *de facto* floor or set of minimum standards,"[14] as would State commissions in other States, such as Virginia, Georgia, Florida, Mississippi and Oklahoma, that are also reportedly faced with anti-competitive pressures.[15]

State commissions are also already encountering specific LEC requests for Section 251(f)(2) waivers that may be inconsistent with the statute. One such example is Southern New England Telephone's ("SNET") recent application under Section 251(f)(2) for an exemption from the Telecommunication Act's wholesale pricing formula. SNET, a New York Stock Exchange company, is a LEC which serves the country's most densely populated State, Connecticut, which in turn includes some of

[11] Albert R. Karr, Texas Defies Washington in Phone Deregulation, Protecting Its Local Bell Against Giant Rivals, The Wall Street Journal, A16 (May 2, 1996).

[12] 47 U.S.C. § 252(d)(3).

[13] Albert R. Karr, Texas Defies Washington in Phone Deregulation, Protecting Its Local Bell Against Giant Rivals, The Wall Street Journal, A16 (May 2, 1996).

[14] Interconnection NPRM at ¶ 20.

[15] Albert R. Karr, Texas Defies Washington in Phone Deregulation, Protecting Its Local Bell Against Giant Rivals, The Wall Street Journal, A16 (May 2, 1996).

the region's busiest cities, such as Hartford, New Haven and Bridgeport. SNET is obviously not a rural LEC, nor does it appear to be in need of any special economic or technical protection. Indeed, as a LEC that has already entered the long distance and video markets, it is precisely the type of carrier that Congress intended to lose its local monopoly. The Connecticut Department of Utility Control ("CDUC") has yet to rule on SNET's request. However, the CDUC would certainly benefit from appropriate guidelines.

Other LECs, and other States, are likely to experience similar, if not more difficult, problems. Puerto Rico is a potential case in point.[16/] Puerto Rico currently has a large, but very closed, local telephone market. Puerto Rico is a large territory -- 110 by 35 miles, which is roughly the size of Connecticut. Its population, at 3.6 million, is larger than that of fully half the States, including Virginia, Maryland, and Massachusetts.

The local Puerto Rico telecommunications market is correspondingly quite large. Indeed, it constitutes the largest contiguous local service territory of all the independent local exchange companies ("LECs"). Moreover, the local exchange company's annual revenues, at approximately $1.1 billion, are similarly larger than almost all other independent LECs. Nevertheless, the local exchange company, like SNET, controls less than 2% of the Nation's lines.

At the same time, the local Puerto Rico market is also perhaps the most closed local market in the country. There are three principal reasons for this. **First**, the local exchange company currently enjoys a statutory monopoly over local services. **Second**, the LEC is wholly-owned by the government of Puerto Rico through the

16/ Puerto Rico is a "State" under the Telecommunications Act of 1996. See Telecommunications Act of 1996 at § 3(40) ("The term 'State' includes the District of Columbia and the Territories and possessions.")

Puerto Rico Telephone Authority ("PRTA"). **Third**, there is no independent regulatory authority with jurisdiction over the LEC: the same individual who heads PRTA also runs the local exchange company. Given the absence of an independent regulator and the government ownership of the monopoly LEC, it is clear that the establishment and enforcement of national standards for waivers from the interconnection requirements are essential. Moreover, the Puerto Rico local exchange company has applied to provide international and video services.[17/]

As can be seen by the above examples, such national standards are particularly important where larger LECs are concerned, as such LECs are more likely than their smaller, more rural counterparts, to seek inappropriate exemptions. While it is true that all carriers with less than 2% of the Nation's access lines are eligible for a Section 251(f)(2) waiver as a threshold matter, the Commission should make clear that **any** LEC who meet this threshold nevertheless must still meet the exacting economic, technical and public interest standards which are also an integral part of Section 251(f)(2). As discussed above, Section 251(f)(2) was designed to protect small, rural LECs who do not have the technical or economic resources to face significant competition from larger carriers. As the Senate Committee Report stated:

> The Committee intends that. . .a State shall, consistent with the protection of consumers and allowing for competition, use this authority to provide a level playing field, **particularly when a company or carrier to which this subsection applies faces competition from a telecommunications carrier that is a large global or nationwide entity that has financial or technological**

17/ See File No. ITC-96-214 (application to provide international services); In the Matter of Application of Puerto Rico Telephone Company for authority to operate, own and maintain facilities and equipment to test new technologies for use in a Video Dialtone trial, 10 FCC Rcd 156 (1994).

> **resources that are significantly greater than the resources of the company or carrier.**[18/]

Clearly, this provision, along with the rest of Section 251, was designed to promote, not impede competition, by providing a very limited exemption for particularly vulnerable LECs. Such an exemption ensures that, in the long run, one monopoly carrier is not simply replaced by another, more robust monopoly carrier, but rather is given an opportunity to retool in order to more effectively compete in an open environment. The Commission should therefore emphasize that the Section 251(f)(2) waiver is not available to those larger LECs who clearly have the economic and technical ability to compete.

B. The Commission's Rules Must Ensure That State Commission Decisions Under Section 251(f) Are Uniform And Pro-Competitive

It is imperative that the Commission's rules establish uniform, pro-competitive standards for consideration of waivers under Section 251(f)(2). As discussed above, Section 251(f)(2) grants each State commission the authority to exempt a LEC with less than 2% of the Nation's subscriber lines from Section 251's interconnection obligations if it determines that such an exemption:

> (A) is **necessary** (i) to avoid a **significant adverse economic impact** on users of telecommunications services generally; (ii) to avoid imposing a requirement that is **unduly economically burdensome**; or (iii) to avoid imposing a requirement that is **technically infeasible**; and (B) is **consistent with the public interest**, convenience and necessity.[19/]

While this provision does set forth general criteria for determining whether a LEC qualifies for an exemption, they are broad enough to permit vastly divergent decisions

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[18/] S. Rep. No. 104-23 104th Cong., 1st Sess. 22 (1995) (emphasis supplied).

[19/] Telecommunications Act of 1996 at § 251(f)(2).

which can be the product of local anti-competitive pressures just as readily as of relevant local market considerations. It is thus imperative that the Commission establish base-line rules which will assure all parties involved that it is the latter, not the former, which informs the ultimate decision.

To this end, TLD proposes the following pro-competitive standards. These standards are solidly grounded in the clear statutory language of Section 251(f)(2), and the clear Congressional intent underlying it. They are designed, as the Commission suggested, to be pro-competitive without being "pro-competitor."[20/] Specifically, they would allow a LEC to obtain a waiver only if the obligation sought to be waived would undeniably and unavoidably: (1) impose material losses on a large portion of the LEC's subscribers; (2) require the LEC to offer services at below cost; or (3) be physically impossible for the LEC to comply with. These standards would also require a State commission decision to comport with the fundamental judgment that Congress made in enacting Section 251: that open local markets are in the public interest. Thus, any decision granting a waiver must explain why such a waiver will, in the final analysis, **promote** not hinder, local competition.

1. Section 251(f)(2)(A): "Necessary"

Section 251(f)(2)(A) requires that any waiver granted be "necessary." The Commission should explicitly state that "necessary" means that there is no other available alternative. This standard is based on the dictionary definition of "necessary," that is, "of an inevitable nature: inescapable."[21/] The Commission should also require that the State commission clearly state why there is no other alternative. This explanation should include a discussion of other proposed alternatives and of why

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20/ Interconnection NPRM at ¶ 12.

21/ Merriam Webster's Collegiate Dictionary, 10th Ed., at 776 (1994).

such alternatives are not viable. Not only does this interpretation of "necessary" comport with the plain meaning of the word, but it also ensures that Congress' fundamental decision that local markets should be open to competition is not discarded lightly. Moreover, this interpretation does not restrict State commissions in the proper exercise of their discretion. Indeed, they are simply standard components of modern administrative procedure.

2. Section 251(f)(2)(A)(i): "Significant Adverse Economic Impact On Users Of Telecommunications Services Generally"

Section 251(f)(2)(A)(i) permits the State commission to grant a waiver in order to "avoid a **significant adverse economic impact on users** of telecommunications services generally." Here, the Commission should make clear that a LEC must demonstrate that the obligation for which the waiver is sought would impose a material financial loss to a large portion of its subscribers. In other words, the alleged loss cannot simply involve a minor or speculative amount or affect only a small proportion of users.

The Commission should establish clear minimum numerical benchmarks. For example, the Commission could state that "users of telecommunications services generally" means the majority -- 50% or more -- of a LEC's users must be affected. Similarly, the Commission could state that a significant adverse impact requires a rate increase of at least 20%.

3. Section 251(f)(2)(A)(ii): "Unduly Economically Burdensome"

Section 251(f)(2)(A)(ii) permits the State commission to grant a waiver in order to "avoid imposing a requirement that is **unduly economically burdensome**." The Commission should clarify that mere LEC losses are not enough to meet this statutory test. Congress recognized that opening local markets to competition would

inevitably result in incumbent LECs losing some market share, revenues and profits: such losses are the natural result of increased consumer choice and lower rates. Indeed, the whole point of the local competition provisions was to promote competition and efficiency which would provide users with lower prices. Thus, a waiver should not be granted merely to avoid lost profits. Instead, the Commission should require a LEC to demonstrate that the particular obligation sought to be waived would in fact force it to provide service below cost, thereby threatening the LEC's long-term competitive viability.

4. Section 251(f)(2)(A)(iii): "Technically Infeasible"

Section 251(f)(2)(A)(iii) permits the State commission to grant a waiver in order to "avoid imposing a requirement that is technically infeasible." The Commission should specify that the "technically infeasible" standard is not satisfied simply because a LEC must make capital expenditures to implement an interconnection agreement. Indeed, the negotiation, arbitration and pricing provisions of Section 252 contain more than sufficient assurance that a LEC can take such expenditures into account when negotiating an interconnection agreement in the first instance.[22/] Instead, the Commission should require a LEC to demonstrate that it is physically impossible to meet the specific interconnection requirement it seeks a waiver for.

5. Section 251(f)(2)(B): "Consistent With The Public Interest, Convenience, And Necessity"

Section 251(f)(2)(B) requires that any waiver granted be consistent with "the public interest, convenience, and necessity." The Commission should clarify that a decision is consistent with the public interest only if it is consistent with Congress' national policy choice, *i.e.* that local markets should be opened except in those rare

[22/] See 47 U.S.C. § 252(a)-(d).

instances where a waiver is necessary to allow an incumbent LEC sufficient time to adequately prepare for competition -- either because its own economic and technical resources are in and of themselves inadequate or because its proposed competitors' resources are so vastly superior that the LECs survival is threatened. The FCC should accordingly should make clear that, in order for a waiver to be granted, the public interest benefits in granting a LEC relief must outweigh the benefits of local competition.

In addition, there is a strong public interest in preventing a LEC that is entering the long distance and video markets from using their local monopoly position to gain an unfair competitive advantage in these new markets. Accordingly, the Commission should clarify that it is not in the public interest for a LEC entering the long distance or video markets to receive a waiver from Section 251's interconnection obligations.

III. THE COMMISSION MUST ACCEPT APPELLATE JURISDICTION OF STATE COMMISSION WAIVER DECISIONS TO ENSURE ADOPTION OF ITS NATIONAL, PRO-COMPETITIVE STANDARDS

To promote adoption of these national, pro-competitive standards, the Commission should require appeals of State commission decisions to be brought directly to the FCC itself. Such a requirement will ensure that State commission decisions are subject to disinterested, impartial review. This in turn will help ensure that both the initial and the ultimate decision is truly competitor-neutral, providing State commissions, as it does, with both feedback regarding federal guidelines and the ammunition they may need to resist intense local lobbying efforts designed to keep the local market closed. Such a requirement also will help ensure a measure of national uniformity to Section 251(f)(2) decisions generally. Moreover, such a requirement will

also be administratively efficient, as it will allow the Commission to simultaneously address the issue of whether a LEC meets Section 251(f)(2)'s public interest standard generally and any specific conflicts between particular State statutes and Section 251(f)(2) that may have been a determining factor in the State commission's decision.

There is no question that the Commission has the authority to adopt such an appeal requirement. As the Commission itself has stated:

> [E]ven without Congress' explicit grant of authority to the Commission to adopt procedures for appeals of local rate decisions, we believe that we would still have the authority to require Commission review of appeals because, under the Supremacy Clause of the Constitution, a federal agency acting within its delegated authority may preempt state laws "to the extent it is believed that such action is necessary to achieve its purposes."[23/]

That Congress expressly left the administration of Section 251(f)(2) to the States does not eliminate the Commission's ability to impose such an appeal requirement. As discussed earlier, Congress required the Commission to "complete all action necessary to establish regulations to implement the requirements of this section."[24/] The Commission's assertion of jurisdiction over State commission decisions does just that, as such jurisdiction ensures that Congress' scheme for introducing competition to local markets is in fact implemented. Moreover, as the Supreme Court has stated:

23/ In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, 8 FCC Rcd 5631, 5730, quoting City of New York v. FCC, 486 U.S. 57 63 (1986). See also In Re Exclusive Jurisdiction With Respect to Potential Violations of the Lowest Unit Charge Requirements of Section 315(b) of the Communications Act, 6 FCC Rcd 7511 (1991), recon. denied, 7 FCC Rcd 4123 (1992) (holding that the FCC had the authority to declare the Commission as the sole forum for adjudicating disputes under § 315(b)), petition for review dismissed, Miller v. FCC, 66 F.3d 1140 (11th Cir. 1995) (dismissed on grounds that petitioners did not present a case or controversy within the meaning of Article III of the Constitution).

24/ 47 U.S.C. § 251(d (1).

> [A] pre-emptive regulation's force does not depend on express congressional authorization to displace state law. . . Instead, the correct focus is on the proper bounds of its lawful authority to undertake such action. The statutorily authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purposes thereof. . .If the agency's choice to pre-empt represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned.[25/]

Congress clearly entrusted the FCC with developing regulations to implement its comprehensive, pro-competitive interconnection policy throughout the nation. The uniform implementation of Section 251(f)(2) is critical to this policy. Given this statutory obligation, and the absence of anything in the statute or legislative history that demonstrates that Congress would not have sanctioned such essential FCC action, the Commission should accept jurisdiction over appeals from State commission waiver decisions.

[25/] City of New York, 486 U.S. 57 at 64 (footnotes omitted).

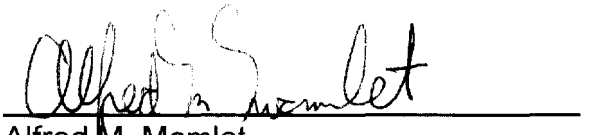
IV. CONCLUSION

For the foregoing reasons, TLD strongly supports the Commission's efforts to create an overarching national regulatory framework for implementing the local competition provisions of the Telecommunications Act of 1996. In particular, TLD urges the Commission to adopt the standards suggested above to ensure that Section 251(f)(2) is implemented in an impartial, pro-competitive fashion.

Dated: May 16, 1996

Respectfully submitted,

Telefónica Larga Distancia de Puerto Rico, Inc.



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CERTIFICATE OF SERVICE

I, Colleen Sechrest, hereby certify that the foregoing Comments were served by hand delivery (or as otherwise indicated) this 16th day of May, 1996, on the following:

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